UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

NAVIN SHARMA,

                 Plaintiff,

      v.

CITY OF VANCOUVER, a Washington
municipal corporation; PATRICK J. MC
DONNELL, Vancouver City Manager; and
MITCH BARKER, Acting Police Chief,

                 Defendants.

CASE NO. C06-5688BHS

ORDER GRANTING IN PART
AND DENYING IN PART
DEFENDANTS' MOTION TO
COMPEL DISCLOSURE OF
COMPUTATION OF DAMAGES

     This matter comes before the Court on Defendants' Motion to Compel Disclosure of

Computation of Damages (Dkt. 59). The Court has considered the pleadings filed in support of

and in opposition to the motion and the remainder of the file and hereby grants in part and denies

in part the motion for the reasons herein.

I. BACKGROUND

     The deadline for exchanging initial disclosures in this matter was March 19, 2007. Dkt. 4.

Plaintiff provided initial disclosures on April 2, 2007, listing his claimed damages. Dkt. 59 at 2.

     Plaintiff's amended complaint alleges that he was subjected to discrimination on the basis

of race in violation of 42 U.S.C. § 1981, the Fourteenth Amendment, and Washington's Law

Against Discrimination, RCW 49.60 *et seq.* Dkt. 25. Plaintiff alleges that he has incurred four

categories of damages: (1) lost back pay, wages, and benefits; (2) lost front pay, future wages,

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1   and benefits; (3) other consequential damages such as medical expenses, litigation costs, and

2   attorneys' fees; and (4) emotional distress and anxiety and damage to professional reputation.

3   Dkt. 25 at 11.

4   After Plaintiff amended his complaint to include discrimination and retaliation claims,

5   Defendants' counsel requested supplementation of Plaintiff's initial disclosures. Dkt. 59 at 3.

6   Defendants received such supplementation by email but contend that the supplementation did not

7   include computation of medical expenses, general damages, or other damages. Dkt. 60-3, Exh. 2

8   at 6. Plaintiff did agree to provide copies of medical billings as evidence of his general damages,

9   however. *Id.*

10   Defendants then sought identification of all health care providers who evaluated Plaintiff

11 or provided treatment during the past ten years and production of all medical health records from

12 such providers. Dkt. 60-5, Exh. 4 at 12. Plaintiff objected to the requests as overly broad, outside

13 the scope of Federal Rule of Civil Procedure 26(b), and duplicative of a previous request. *Id.*

14 Plaintiff also objected that the requests were unduly duplicative and burdensome because

15 Plaintiff had already signed medical releases. *Id.* Defendants now move for an order compelling

16 Plaintiff to make the disclosures required by Federal Rule of Civil Procedure 26(a)(1)(A)(iii) and

17 for sanctions. Dkt. 59.

II. DISCUSSION

19   Under the Federal Rules of Civil Procedure, parties are required to disclose, without

20 awaiting a discovery request, the following:

21   (iii) a computation of each category of damages claimed by the disclosing
           party--who must also make available for inspection and copying as under Rule 34
22   the documents or other evidentiary material, unless privileged or protected from
           disclosure, on which each computation is based, including materials bearing on
23   the nature and extent of injuries suffered.

24 Fed. R. Civ. P. 26(a)(1)(A)(iii). This initial disclosure must be based upon information

25 reasonably available to the disclosing party at the time of the disclosure. Fed. R. Civ. P.

26 26(a)(1)(E). A party is not excused from its initial disclosure obligation merely because the party

27 has not yet fully investigated its case. *Id.* The disclosing party must also supplement its initial

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1   disclosures pursuant to Federal Rule of Civil Procedure 26(e)(1). If a party fails to make its

2   initial disclosures, any party may move to compel such disclosure. Fed. R. Civ. P. 37(a)(3)(A).

3   The motion must be accompanied by a "certification that the movant has in good faith conferred

4   or attempted to confer with the person or party failing to make disclosure or discovery in an

5   effort to obtain it without court action." Fed. R. Civ. P. 37(a)(1). A good faith effort to confer

6   requires a face-to-face meeting or a telephone conference. Local Rule CR 37(a)(2)(A).

7   To satisfy his initial disclosure obligations, Plaintiff has provided calculations of his back

8   pay and front pay. Dkt. 60-3, Exh. 2. These computations are rather detailed, and Defendants do

9   not contend that they are inadequate. Plaintiff fails to compute the damages claimed for medical

10   expenses because the expert witness disclosures have not yet been made and Plaintiff has not yet

11   received all requested documents from discovery. Dkt. 64 at 9. Initial disclosures are

12   independent from the exchange of documents in discovery. While the Court appreciates that

13   Plaintiff may not be able to state his medical damages with exact certainty at this juncture, he is

14   required to provide a computation of his medical damages, based upon information reasonably

15   known to him, and the evidentiary material on which such computation is based. If Plaintiff's

16   computation of medical damages proves to be incomplete or inaccurate, Plaintiff must

17   supplement his disclosure.

18   Plaintiff also refuses to compute the damages sought for his claimed emotional injuries

19   and as punitive damages. Dkt. 64 at 5, 9. Plaintiff contends that he "is unable to predict what a

20   jury may do at trial when awarding punitive damages" and "should not be required to divine

21   what a jury might award and arbitrarily place a specific dollar value on the emotional distress

22   damages he has and will continue to sustain." *Id.* While Plaintiff is not expected to predict how

23   the jury will react to the evidence at trial, Plaintiff is required by Federal Rule of Civil Procedure

24   26(a)(1)(A)(iii) to provide a computation of his damages and the evidentiary material supporting

25   that computation and to supplement or correct his computation if it is incorrect or incomplete.

26   *See* Fed. R. Civ. P. 26(e)(1).

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Having concluded that Plaintiff's initial disclosures are deficient and that Plaintiff is

required to provide damage computations and supporting evidentiary material, the Court turns to

Defendants' request for $2,500 in fees associated with the discovery dispute. In light of

Plaintiff's counsel's good faith belief that computation of the damages sought would be

premature and uncertain, the Court declines to award fees. *See* Fed. R. Civ. P. 37(a)(5)(A).

However, the Court reminds Plaintiff's counsel that they are under an obligation to know and

comply with the Federal Rules of Civil Procedure, and that ignorance alone will not justify the

avoidance of sanctions for failure to comply with such rules in the future.

III. ORDER

Therefore, it is hereby

ORDERED that Defendants' Motion to Compel Disclosure of Computation of Damages

(Dkt. 59) is **GRANTED in part** and **DENIED in part**. Plaintiff shall forthwith provide

Defendants with a computation of each category of damages he claims and make available for

inspection and copying the evidentiary material on which such computation is based, in

accordance with Federal Rule of Civil Procedure 26(a)(1)(A)(iii).

DATED this 13th day of December, 2007.

BENJAMIN H. SETTLE
United States District Judge

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